Custom Trim Products *and* United Furniture Workers of America, AFL-CIO *and* United Furniture Workers of America, AFL-CIO, Local 361. Cases 10-CA-15029, 10-CA-15184, 10-CA-15386, 10-CA-14880, and 10-RC-11872

April 9, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On August 18, 1980, Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, Respondent and the Charging Party filed exceptions and supporting briefs, and Respondent filed a brief in answer to the Charging Party's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order.

In this consolidated complaint and representation case proceeding, the Administrative Law Judge found several violations of Section 8(a)(1) of the Act, but dismissed other 8(a)(1) and (3) allegations. The Charging Party and Respondent respectively have excepted to certain of these findings. Based on our examination of the record as a whole, we affirm the Administrative Law Judge's findings and recommendations on the unfair labor practice allegations of the complaint.

Notwithstanding his finding of 8(a)(1) violations, the Administrative Law Judge did not recommend that the election held herein, which the Union lost, be set aside. All but two of the 8(a)(1) violations found occurred either *before* the Union filed its election petition or *after* the election itself and thus were outside the critical period.[2] With regard to the two violations that occurred within the critical period, and which were the subject of timely filed objections, the Administrative Law Judge found that one objection (Objection 20) was not properly before him, and that the other conduct (constituting Objections 7-8), while constituting an unfair labor practice, did not warrant setting the election aside. As explained below, we find that these objections have merit, and that the first election should be set aside and a second one be directed.

1. Although the Administrative Law Judge found that Respondent's October 19, 1979, letter to its employees conveyed to them that it would be futile to select the Union, and that the letter constituted a violation of Section 8(a)(1) of the Act, he did not pass on whether this letter was sufficient to warrant setting aside the election. The Administrative Law Judge noted that the letter was alleged as part of the Union Objection 20, but found that he was precluded from considering Objection 20 by an earlier Board Order. In this, the Administrative Law Judge was correct.[3] It now falls to the Board to consider the letter as part of Objection 20. Having done so, we find that Respondent's October 19 letter to all employees, which conveyed to employees the futility of selecting a union representative, and which was found by the Administrative Law Judge to be in violation of Section 8(a)(1) of the Act, is also sufficient to warrant setting aside the election.

Generally, it is the Board's policy to direct a new election whenever an unfair labor practice occurs during the critical period since "conduct violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice in an election."[4] The Board has carved out an exception to this policy, however, where it is virtually impossible to conclude that the violation could have affected the results of an election. In determining whether a violation could have affected the results of an election, we have considered "the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors."[5] In *Super Thrift*, the bargaining unit included 24 employees, 2 of whom were subjected to coercive statements violative of Section 8(a)(1) of the Act. The Board concluded there that the election should be set aside. Here, Respondent mailed the October 19 letter to all of its employees. It was signed by a high-level supervisor, the plant manager. And it contained a threat which the Board has recognized is likely to have a

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The petition was filed on August 21, 1979, and the election was held on October 26, 1979.

[3] We note that initially the Regional Director had concluded that both parts of Objection 20, including the October 19 letter, had merit and warranted setting aside the election. Upon Respondent's request for review, the Board granted review on Objection 20 and indicated it would "hold the disposition of the issues raised by that Objection in abeyance . . . ." The Board further remanded the representation proceeding to the Regional Director to hold a hearing on Union Objections 7, 8, 11, and 12. The Regional Director had indicated as an alternative to setting aside the election on Objection 20 that material issues of fact existed involving these other four objections. On remand, the Regional Director consolidated the objections for hearing with the unfair labor practices. The Administrative Law Judge in his Decision then ruled on Objections 7, 8, 11, and 12, but determined that the Board had reserved to itself possible later determination of Objection 20. Again, in this, we find the Administrative Law Judge correctly followed the Board's Order.

[4] *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786 (1962).

[5] *Super Thrift Markets, Inc. t/a Enola Super Thrift*, 233 NLRB 409 (1977).

substantial impact on employees' free choice.[6] Accordingly, we conclude that the part of Objection 20 alleging the October 19 letter to be objectionable should be sustained.[7]

2. While the Administrative Law Judge found that Respondent had maintained an illegal no-distribution rule during a portion of the critical period, he found that this did not constitute objectionable conduct. We disagree.

Respondent posted a notice to all employees on August 8, 1979, purporting to revise the employee handbook. The revisions included a paragraph which stated, *inter alia*, that:

> No distribution of any kind, including circulars or other printed materials shall be permitted in any area at any time.

On August 21, 1979, the Charging Party filed its election petition. On August 28, 1979, Respondent posted a second notice to employees which was identical to the August 8 notice in all respects but one; i.e., one word had been included in the new no-distribution paragraph so that the paragraph now read:

> No distribution of any kind, including circulars or other printed materials shall be permitted in any *work* area at any time. [Emphasis supplied.]

The Administrative Law Judge found the August 8 rule was violative of Section 8(a)(1) of the Act, as it was overly broad in prohibiting distribution in any area at any time. However, the Administrative Law Judge did not find this unlawful rule to be objectionable as it appeared to be an inadvertent error, it was corrected 7 days after the petition had been filed, and 59 days prior to the holding of the election; the record evidence failed to demonstrate that the unlawful rule had ever been applied to prohibit the distribution of literature; and there was no other objectionable conduct by Respondent.

We disagree with the Administrative Law Judge's rationale for not finding the original rule to be objectionable conduct as we find the manner in which this rule was corrected was insufficient to apprise the employees of its repudiation.[8] Moreover, the fact that the record contains no evidence indicating that the rule was implemented fails to take account of the fact that the rule's mere existence tended to "inhibit the union activities of conscientious minded employees."[9] Finally, we note that our finding a portion of Objection 20 to be objectionable conduct eliminates the Administrative Law Judge's final reason for not finding the rule to also be objectionable conduct. Accordingly, the posting of the unlawful no-distribution rule, albeit for only 7 days during the critical period, is another ground for setting aside the election.[10]

[6] See, e.g., *Donn Products, Inc. & American Metals Corporation*, 229 NLRB 116 (1977).

[7] In such circumstances, we find it unnecessary to pass on that part of Objection 20 that alleges Respondent's October 15 letter as further objectionable conduct.

[8] See, e.g., *Baldor Electric Co.*, 245 NLRB 614 (1979); cf. *T.V. and Radio Parts Company, Inc.*, 236 NLRB 689, 694 (1978).

[9] *Automated Products, Inc.*, 242 NLRB 424 (1979).

[10] Chairman Fanning would also find that the new rule is objectionable. See his dissenting opinion in *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, 625 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Custom Trim Products, Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election held on October 26, 1979, in Case 10-RC-11872 be, and it hereby is, set aside, and that Case 10-RC-11872 be, and it hereby is, remanded to the Regional Director for the purpose of conducting a second election.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard by me on March 18 and 19, 1980, in Atlanta, Georgia. The charge in Case 10-CA-14880 was filed on August 2, 1979. The charge in Case 10-CA-15029 was filed on September 19, 1979, and amended on October 4, 1979. The charge in Case 10-CA-15184 was filed on November 1, 1979. The charge in Case 10-CA-15386 was filed on January 21, 1980. On September 26, 1979, a complaint issued in Case 10-CA-14880. The complaint issued in Case 10-CA-15029 on October 26, 1979. On December 10, 1979, a complaint issued in Case 10-CA-15184. On February 22, a 1980, complaint issued in Case 10-CA-15386. By order of the Regional Director for Region 10, Cases 10-CA-14880, 10-CA-15029, 10-CA-15184, and 10-CA-15386 were consolidated for hearing along with Case 10-RC-11872.

In his order directing consolidation of Case 10-RC-11872, the Regional Director directed a hearing be held to resolve the issues raised by objections filed by the Petitioner in that case.[1] The petition in Case 10-RC-11872

[1] The Regional Director's order directed a hearing on the issues raised by the Petitioner's Objections 7, 8, 11, and 12. Those objections are as follows:

Continued

was filed by United Furniture Workers of America, Local 361, AFL-CIO, on August 21, 1979. Pursuant to a Decision and Direction of Election issued by the Regional Director on October 1, 1979, an election by secret ballot was conducted on October 26, 1979.[2] The tally of ballots indicated that there were approximately 43 eligible voters, 16 votes were cast for the Petitioner, 18 votes were cast against the Petitioner; there were 8 challenged ballots and no void ballots. On November 2, 1979, the Petitioner in Case 10-RC-11872 filed timely objections to the election. By Supplemental Decision on Objections and Challenged Ballots, Order and Direction of Second Election, dated December 20, 1979, the Regional Director sustained all eight challenged ballots and directed that the election be set aside on the basis of Objection 20. The Regional Director also found that Petitioner's Objections 7, 8, 11, and 12 raised issues which could be best resolved at a hearing. Subsequently, the Employer filed an "Employer's Request for Review of Regional Director's Supplemental Decision on Objections and Challenged Ballots, Order and Direction of Second Election." A request for review was also filed by the Petitioner. By order dated February 7, 1980, the Board granted Employer's request for review, with respect to the portions of Objection 20 sustained by the Regional Director. By that order the Board directed that disposition of the issues raised by Objection 20 be held in abeyance,[3] and remanded the case to the Regional Director for hearing and further appropriate action on the other objections enumerated by the Regional Director as requiring a hearing.

The allegations in Cases 10-CA-14880, 10-CA-15029, 10-CA-15184, and 10-CA-15386 include several allegations of independent 8(a)(1) violations. Additionally, the complaint in Case 10-CA-14880 alleges that Respondent violated Section 8(a)(3) by suspending employee Robert Campbell on July 31, 1979. The complaint in Case 10-CA-15029 alleges that Respondent violated Section 8(a)(3) of the Act by issuing a written warning to employee Robert Campbell on September 6, 1979. The complaint in Case 10-CA-15386 alleges that Respondent violated Section 8(a)(3) of the Act by issuing written reprimands to employee Grover Ridley and by discharging and refusing to reinstate Grover Ridley.

Upon the entire record and from my observations of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I hereby make the following:

A. *Findings*

The Evidence[4]

The allegations herein generally involve an organizational campaign, which commenced among Respondent's employees during the summer of 1979. Robert Campbell was the principal union advocate among the employees. On July 30, 1979, Campbell hand-delivered a letter to Plant Manager Krysiak, advising of the Furniture Workers organizing campaign. The letter listed six employees, including Campbell, who was designated as chief steward, and advised that those six were assisting the Union.

Early 1979

Campbell testified that on several occasions early in 1979 he asked Plant Engineer Don Nelson of his opinion of the Union. Nelson allegedly responded that he felt that there was no need for a union, and that he felt that they would close down the plant if the Union came in. Campbell said that he also had conversations regarding the Union with Supervisor Don Jackson during the same period of time. Jackson also told Campbell that the plant would probably close if the Union came in. Jackson added that the employees would probably lose some of their benefits.

In response to the above testimony, Don Jackson testified, "If I told Campbell that the plant would close down, it was because of economic reasons, to that effect." According to Jackson, Campbell had made com-

7—The Employer, on or about August 9, 1979, promulgated and posted in its plant, and at all times thereafter, maintained the following rule: "No distribution of any kind, including circulars or other printed matter, shall be permitted in any area at any time."

8—The Employer, by promulgating, posting and maintaining the rule set forth in paragraph 7 above, prohibited its employees from distributing literature on behalf of any labor organization in nonwork areas during employees' non-work time.

11—The Employer, contrary to past practice, prohibited employees from using the telephone for the purpose of causing its employees to reject the Union as their collective bargaining representative, thereby intimidating employees.

12—The Employer issued a written warning to Robert Campbell, chief job steward and member of the organizing committee, because of his membership in, and activities on behalf of, the Union, and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

[2] In his Decision and Direction of Election, the Regional Director found the appropriate unit to be:

All production and maintenance employees employed by the Employer at its Atlanta, Georgia, plant, including all shipping and receiving employees, sealer packer employees, extrusion operator employees, compound/palletizer employees, maintenance employees, and lead operators, but excluding all office clerical employees, guards and supervisors as defined in the Act.

[3] At the hearing herein, the Charging Party contended that I should take evidence and consider Objection 20. In view of the Board's order I denied that request. However, in order to avoid the possibility of a remand requiring me to take evidence on Objection 20, the parties stipulated that they would present all their evidence regarding that objection during the hearing herein.

[4] Neither the allegations regarding commerce nor those regarding the Charging Parties' status as labor organizations are issues. The complaint alleges, Respondent admits, and I find that at all times material herein Respondent, while engaged in its business as manufacturer of custom trim molding for automobiles at its Atlanta, Georgia, facility, sold and shipped from its Atlanta facility finished products valued in excess of $50,000 directly to customers located outside the State of Georgia. The complaint alleges, Respondent admits, and I find that at all times material herein Respondent has been an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The complaint also alleged, Respondent admitted, and I find the Charging Parties, United Furniture Workers of America, AFL-CIO, and United Furniture Workers of America, AFL-CIO, Local 361, are labor organizations within the meaning of Sec. 2(5) of the Act.

ments to the effect that the Union could keep the plant operating.[5]

Don Nelson denied that he had ever had conversations with Campbell during which he stated that if the Union came in that the plant would close down.

June

On June 18, 1979, Brian Krysiak assumed the duties as plant manager of Respondent's Atlanta facility.

July

Robert Campbell testified that he initiated the union activity by contacting a union representative on the evening of July 18, 1979. Campbell was advised that it would be necessary to organize an in-plant committee in order to kick off an organizing campaign.

Henrietta Anderson, a former employee, testified that around July 18 she overheard a conversation between Supervisor Don Jackson, Robert Campbell, and two other employees regarding the Union. Anderson testified that she overheard Don Jackson tell Campbell that Brian Krysiak "had enough stock in the warehouse to close the plant down six months if the talk still is going on." Anderson testified that the conversation became heated and Robert Campbell left. She said that Don Jackson asked her and the two other employees, "Do you all want a union?" Anderson testified that after that conversation she went back to her working area where she overheard a conversation between the same two employees and Don Jackson. Anderson testified that Jackson told the employees about his brother, who was in a union and had to pay over half his paycheck in union dues.

Jackson denied that he asked Campbell and other employees if they wanted a union.

On the morning of July 19, Plant Manager Krysiak addressed the employees. Although the talk did not involve the Union, Robert Campbell testified that he told Supervisor Lewis that Krysiak's comments might precipitate union organizational activities. Campbell testified that, some 20 minutes after he made the comments to Lewis, he was called into Plant Manager Krysiak's office. Campbell testified that in addition to Krysiak also present were Personnel Director Goodwin and Don Nelson. According to Campbell, Krysiak stated that there was a rumor going around that he (Campbell) was talking up the Union and that he had disturbed people by talking to them about unions. Krysiak then mentioned that the Company was in poor financial condition and Krysiak mentioned that Campbell's wife was working for the AFL-CIO.

Krysiak admitted that on the morning of July 19 he was told by Bob Lewis that there was a rumor that Robert Campbell was pushing the Union in the plant. Krysiak called Campbell into his office. According to Krysiak he said to Campbell, "Bob, straight up, I want to know: this is between me and you, nothing will come of it. Straight up, do you feel that you need a union in this plant?" According to Krysiak, Campbell told him that he was not pushing the Union. Campbell did tell Krysiak that, if a union election was ever held, he would vote for the Union. Krysiak testified that he also told Campbell, "Bob, if you feel that if someone is harassing you or something that you're doing, come to me and let me know because I am not going to tolerate it in the plant for anyone."

Employee Geneva Bass testified that around July 19 she was working on line three with two other employees when Supervisor Don Jackson came to them and told them that if the Union came in the plant would be closed. Jackson also said that the Union could not do anything for them but take their money. According to Bass, Jackson also said that he had recommended the discharge of Bob Campbell. Jackson remarked that "there was some cards floating around. If you get it, get it and bring it to me. It's a Union card."

Robert Campbell testified that after his meeting with Krysiak on July 19, he observed that Supervisor Jackson started following him around. Campbell testified that, although he had been permitted to talk with employees prior to the union campaign, after July 19 Jackson would always come over and break up conversations and tell Campbell that he should stay away from other employees. Jackson denied that he ever followed Robert Campbell around, following July 19. Jackson did testify that after Krysiak was made plant manager Jackson's duties as supervisor were expanded to include pelletizing and compounding.

On July 30, 1979, Robert Campbell hand-delivered the letter to Krysiak advising him of the Union's organizing campaign and naming the employees that were assisting the Union.

On July 31, Robert Campbell had car trouble and arrived at work 45 minutes late. As Campbell was walking toward his work area, his supervisor, Don Jackson, rode up on a forklift. According to Campbell, Jackson, in a loud voice, told him that if he came in late one more time without calling in that he would be written up. Campbell testified that he tried to explain, but Jackson went on to say something and did not listen. Campbell testified that he was getting angry and that he turned to walk towards his work area because he felt that things were getting out of control. As he turned to walk away, Jackson said, "Hey, kiddo, do you hear me?" Campbell testified that he was very angry at this point because he felt that Jackson was very insulting in the way he called him "kiddo." Campbell turned and asked Jackson, "What did you call me?" Campbell said that the argument became heated, and that he and Jackson were yelling at each other when Don Nelson walked up. Campbell told Nelson that Jackson was getting on his case about coming in late and that he would explain to Nelson what had happened, if Nelson would come to his work area. At that point, Campbell started back towards his work area and, out of frustration, he spun around and pointed to Jackson and said, "Yeah, bug off."

Both Jackson and Nelson testified about the July 31 incident involving Campbell. Their testimony did not depart significantly from that of Campbell's, except according to both Jackson and Nelson, instead of yelling

[5] On cross-examination Campbell testified that he told Jackson that the plant could not close just because the Union came in and Jackson replied that the plant can close if business considerations dictated that action.

"bug off" as Campbell stated in his testimony, he yelled, "fuck you." Don Nelson testified that he talked to Campbell about the incident shortly after it occurred. According to Nelson, Campbell told him that Jackson had called him "kiddo" and that that was no way to talk to anyone. Campbell said, "no son-of-a-bitch calls me a kiddo."

On July 31, Campbell was given a written reprimand. Typed on the written reprimand form was the following statement:

> Insubordination, profane and abusive language to his supervisor and conduct unbecoming to anyone in a working environment. Custom Trim Products rules provided in the employee handbook specify that an employee guilty of insubordination shall be subject to discharge. In view of your record, however, you are hereby suspended for three (3) days without pay—Wednesday, Thursday, and Friday, August 1, 2, and 3. You are to return to work Monday, August 6. Any violation of any rule in the future will result in your immediate termination.

August

Campbell testified that on one occasion during August 1979, while in the breakroom, he overheard Don Jackson say that if the Union came in that they would shut the plant down. Jackson testified that he did recall making a statement to Campbell to the effect that the plant would close for economic reasons.[6]

Alleged discriminatee Grover Ridley testified that while he was in the breakroom, during August 1979, Don Jackson said something to him about his T-shirt looking good. Ridley had testified that he wore a T-shirt advertising the Furniture Workers Union. According to Ridley, he responded to Jackson that he was supposed to get some more T-shirts. Jackson asked him where he got them and Ridley told him from a "black brother." Jackson denied that he was involved in an incident, during August 1979, in which he told Ridley that Ridley's T-shirt looked good.

Campbell testified that during his 3-day suspension, on August 2, he passed out union handhills in the front and off to one side of the plant.

Employee Phyllis Smith testified to a conversation with Don Jackson on August 6. Smith testified that Jackson came to her at her work station and said, "I heard that you signed a union card." Smith asked Jackson who told him and Jackson replied that he had seen her name on a paper.[7] Jackson told Smith that he wished she had talked to him before she signed it and that it was not too late for her to change her mind about signing. Smith testified that Jackson also commented to her that the Union could not promise her a 40-hour workweek and no layoff.

On August 8, Respondent posted a notice to employees, which included the following:

> No solicitation of any kind, including solicitation for membership or subscriptions, will be permitted at any time by employees who are supposed to be working or in such a way as to interfere with the work of other employees who are supposed to be working. Anyone who does so and thereby neglects his work or interferes with the work of others will be subjected to disciplinary action.
>
> No distribution of any kind, including circulars or other printed materials shall be permitted in any area at any time.

On August 21, 1979, the petition in Case 10-RC-11872 was filed with the Regional Office.

On August 28, 1979, Respondent posted a new notice to employees which was, in most ways, similar to the one posted on August 8. However, the last paragraph of the above-quoted August 8 notice was changed to read as follows:

> No distribution of any kind, including circulars or other printed materials shall be permitted in any work area at any time.

September

On September 6, a representation case hearing was conducted by the Regional Office in Case 10-RC-11872. One of the witnesses who testified in that hearing was Grover Ridley, the alleged discriminatee. Ridley was called as a witness by the Union.

On September 13, Robert Campbell received a "disciplinary record" which read:

> On 9/13/79 Campbell without permission was using Company's phone, obviously against Company rules and regulations.

The evidence regarding Campbell's September 13 disciplinary action is generally not disputed. Following the receipt of an unusually large telephone bill for June 1979, Plant Manager Krysiak instituted a policy of prohibiting employees from using nonpay telephones, except to receive emergency in-coming calls.[8] Robert Campbell testified that on several occasions when he had no money to use the pay telephone, he asked Supervisor Shealey for permission to use the company phone, located in shipping and receiving. Both Campbell and Shealey testified that, on those occasions when he asked Shealey, Shealey did permit him to use the phone. On September 13, Campbell went back into shipping and receiving to use the phone. However, he was unable to locate Supervisor Shealey. Campbell testified that he felt it would not do any harm if he used the phone. And he did so. How-

[6] See fn. 5, *supra*.

[7] By letter dated August 6, 1979, from a union representative to Plant Manager Krysiak, which was hand-delivered, Phyllis Smith was identified as one of the employees assisting the Union and its organizing campaign.

[8] Krysiak testified that he instituted the new policy regarding telephones during the early weeks of July 1979. His testimony in that regard was corroborated by Charles Shealey. Campbell testified that he thought the policy was instituted some time in August. However, Campbell admitted that he could not give an exact date. In view of Campbell's admission regarding his ability to recall the date on which the policy was instituted, I have credited the testimony of Plant Manager Krysiak in this regard.

ever, Campbell was written up, as indicated above, for his use of the phone without permission.

October

On October 26, 1979, the election was conducted in Case 10-RC-11872.

January

On January 16, 1980, alleged discriminatee Grover Ridley was discharged. Ridley's termination of employment form indicated that he was terminated "for falsification of production reports, dishonesty, and hiding defective work." Jackson and Krysiak testified that an investigation disclosed that Ridley had falsified his production records for January 15. Krysiak testified that he concluded that Ridley falsified the records in order to cover up the high percentage of scrap that he ran that day. Krysiak testified that a check of the actual production indicated that Ridley's scrap rate should have been 36 percent, rather than the 19 percent he reported.

Geneva Sass testified that on January 21 Plant Manager Krysiak gave a speech to the employees. According to Bass, Krysiak stated during that speech that he had learned through rumors that some of the employees were complaining about being harassed and threatened by union pushers. Krysiak indicated that one employee in particular had come to him and had complained that she had been threatened by one of the union pushers. Krysiak then stated that if employees heard of harassing or if someone harassed them, they should come to him and let him know. Sass testified that there was also a notice to employees posted on the bulletin board regarding harassment by union pushers.

B. *Conclusions*

1. Grover Ridley

In 10-CA-15386, the complaint alleges that, by discharging Ridley on January 16 and issuing written reprimands to him on September 25 and January 15, Respondent violated the Act.

In considering the allegations in this regard, I find that I am unable to credit Ridley's testimony. Grover Ridley testified that he had not received any warnings for running scrap materials before the commencement of the union organizing campaign. Thereafter, when confronted with several "Disciplinary Records" demonstrating that he had been warned previously for running too much scrap, Ridley denied that the signatures on those documents were his. At the request of Respondent's attorney, I compared those signatures to a signature which was admittedly Ridley's. I ruled that the signatures were the same. Subsequently, Ridley qualified his testimony and admitted that on one occasion he had received a 3-day suspension for running scrap.[9] On the basis of those inconsistencies, his testimony as a whole, and my observation of his demeanor, I have concluded that Ridley's testimony is not worthy of belief.

[9] When asked if that suspension was for running scrap, Ridley testified, "I believe it was, just as I can remember now."

Therefore, I have considered the allegations regarding Ridley in light of the remaining record evidence.

On January 14, 1980, Ridley, who was employed as an extruder operator, was running a product designated as "10,000 C-R Molding." At approximately 10:30 that morning, Plant Manager Krysiak noticed about three 55-gallon drums of scrap in Ridley's line. Krysiak cautioned the supervisor, Don Jackson, to determine what the problem was and correct it. Later that afternoon, Krysiak noticed Ridley wheeling a drum of scrap to the dumpster. Krysiak went to Don Jackson at the end of the workday and asked him about Ridley's percentage rate that day. Krysiak was told that the scrap rate was 20 percent.

Krysiak testified that 10-percent scrap was an allowable average. On January 14, the extruder operators on the two shifts other than Ridley's shift ran 5-percent to 9-percent scrap.

Supervisor Jackson testified that he talked to Ridley about his scrap on January 14, and told Ridley that he needed to watch it. On January 15, Jackson noted that Ridley again had a lot of scrap. Jackson then noticed Ridley scrapping two coils. Jackson checked the coils and noticed that they should not have been scrapped. The coils did not have adhesive tape on their entire lengths, but that problem could have been corrected by manually taping the coils. Jackson then asked Ridley why he had thrown the coils away. Ridley became angry and told Jackson to get away from him. Don Nelson was standing nearby. Ridley told Nelson to get Jackson away because Jackson did not know what he was talking about.

Jackson issued a written reprimand to Ridley which stated:

> Grover's scrap rate has been excessively high and housekeeping in his work area very poor, to the extent that he was throwing away good coils with his scrap. When I attempted to discuss these problems with Grover, he refused to listen, told me to just get away from him and leave him alone—that I wasn't to tell him what to do, or how to do it, and not to bother him.

Krysiak testified that around 10:30 a.m., on January 15, he again noticed that Ridley had excessive scrap. Krysiak told Jackson that he had reviewed the records for the other shifts, and even though they were running the same product as Ridley, their scrap rates were not excessive. Krysiak advised Jackson to look into the problem. Krysiak testified that when he went through the plant that afternoon Ridley's scrap drums were full to overflowing. Krysiak was then told of Jackson's run-in with Ridley, earlier that day.

At the end of the day, Krysiak asked Jackson about Ridley's scrap rate. He was told that it was 19 percent. Krysiak replied that it looked like more than 19 percent, and he asked Jackson if he had counted up the physical inventory.

According to Jackson and Krysiak, the inventory check disclosed that Ridley had claimed that he had produced an amount in excess of his actual production. Ac-

cording to the findings, Ridley's incorrect claim resulted in 19-percent scrap. Ridley should have disclosed a 36-percent scrap rate.

Krysiak concluded that Ridley had falsified the production reports in an effort to cover up the large amount of scrap that he had actually run.

Ridley was thereupon discharged.

The General Counsel argues two theories in support of his allegations that Ridley's discharge was violative. The General Counsel argues that Ridley was discharged because of his concerted activity on the evening of January 15. On that evening, Ridley called and complained to an official in Cleveland, Ohio. The General Counsel contends that the call involved protected concerted activity, and that Respondent's decision to discharge Ridley was motivated by its learning of the call. The General Counsel also argues that the reasons given for Ridley's January 16 discharge were pretextual and that the true motivation for Ridley's discharge was Ridley's union activities.

In considering the General Counsel's argument that Ridley was discharged because of his concerted activities on the evening of January 15, I must consider whether that activity was in fact concerted. In that regard Ridley testified that following his January 15 workday, during which he had a run in with Supervisor Don Jackson regarding his running scrap, Ridley placed a call to one of Respondent's officials in Cleveland named John Graham. On an earlier occasion, Ridley had called and spoken to John Graham. However, Ridley testified that on January 15 he was informed over the phone that Graham no longer worked there. Ridley then asked if there was somebody there who could help him. Ridley did not recall the name of the person he spoke to but he was asked what his problem was. According to Ridley's testimony he told the official that he needed someone to help him "down here." Ridley went on to say "they are claiming I am running a lot of scraps, and they are messing with me." Ridley testified that he was told by the official, "I ain't got nothing to do with that plant down there. Why don't you check with Krysiak and see if he can help you out?" Ridley replied, "I did that. Ain't no progress coming." The official replied, "Ain't nothing that I can do. You all should try to work it out." Ridley testified that the above was all that was said and the conversation was concluded.

Subsequently Ridley was asked by the General Counsel what were the problems or complaints that he raised with this man on the telephone. Ridley responded that he was talking with the man about "the supervisor was messing with the employees, you know. They were treated . . . they were complaining about I'm running scrap. And I told him, I said, 'everybody run scrap.' I said, 'knowing the supervisors, they will run scrap when they run scrap, sometimes straightening it out trying to get it run.' And he said you all ought to be able to straighten out down there. He said, 'you ought to be running long enough not to be scrap.' I said, 'everybody still is running it.' I said, 'the machine is messing if you are going to run scrap.' And I asked him couldn't he do something about what was going on. He said he didn't have nothing to do with the plant down there and that's all that was said."

Brian Krysiak testified that he was told by Larry Delatt, who Krysiak described as his counterpart in Cleveland, that Grover Ridley had called and talked to him. Krysiak testified that he was told by Delatt that Ridley asked if they fired people for running scrap. Delatt informed Ridley that people are terminated for running scrap. Delatt told Krysiak that Ridley was under the impression that the Atlanta plant was controlled from Cleveland and Delatt indicated that he had told Ridley that that was not the case.

On the basis of the record evidence regarding Ridley's January 15 call to Delatt, I am unable to conclude that Ridley was engaged in concerted activity. The entire conversation was concerned with Ridley's efforts to deal with his personal problems—the problem that arose during the January 15 workday regarding Ridley running scrap and his run-in with Supervisor Jackson. Therefore, I find the General Counsel's contention in this regard must fail.

The General Counsel's other contention is that Respondent's asserted basis for Ridley's discharge was pretextual and that the true motivation was Ridley's union activities. I find the evidence shows that Ridley did engage in activities on behalf of the Union and that Respondent was aware of Ridley's support for the Union. In that regard I place no value in Respondent's contention that they were unaware that Ridley favored the Union. Respondent admitted that Ridley was called and testified on behalf of the Union during the September 6 representation case hearing. Ridley's testimony, and the testimony of employee Geneva Bass, which I credit, convinced me that Ridley wore union T-shirts to work on occasions during the union organizing campaign. Ridley also attended union meetings.

Nevertheless, I am persuaded by the evidence that the General Counsel failed to prove its case as to Ridley.

I find that the evidence fails to demonstrate that Respondent's asserted basis for discharging Ridley was false. Furthermore, there is no showing of disparity in the way Ridley was treated.

Ridley admitted that he was shown the January 15 "Disciplinary Record" on which he was written up for having an "excessively high" scrap rate. That "Record" also reflects Ridley's refusal to listen to Supervisor Jackson and that Ridley told Jackson "to get away from him and leave him alone." According to Ridley, he told Jackson that he was not going to sign the January 15 "Disciplinary Record." Jackson told him that even, though he did not sign it, the writeup would still be held against him. Ridley testified that nothing else was said. Ridley did not claim that he disputed any of the facts alleged in the disciplinary record. On the basis of Ridley's testimony and testimony of Jackson regarding the basis for the "disciplinary report," which I credit, I find that the written reprimand "Disciplinary Record," was supported in fact. There was no evidence which demonstrated that other employees would not have been disciplined in a

similar fashion for the same offense.[10] Therefore, I find that Respondent did not violate the Act by issuing a written warning to Ridley on January 15.

Moreover, there was no evidence disputing Respondent's assertion that Ridley falsified his January 15 production report. Ridley's production report for that day showed that he ran 322 dark blue coils and 40 medium camel coils. Using those figures, Ridley's scrap rate computed to 19 percent. However, upon checking the inventory, Respondent allegedly discovered that Ridley had actually run 322 dark blue and 20 medium camel coils. By using the corrected production figures, Respondent ascertained that Ridley's scrap rate was actually 36 percent. The General Counsel made no effort to rebut this evidence. Therefore, I find that the evidence supports Respondent's basis for determining that Ridley falsified his January 15 record. Uncontested testimony established that Respondent's policy was to terminate an employee for such an offense. Under those circumstances I am unable to find any basis on which the General Counsel could prevail. Therefore, I find no violation in Ridley's discharge.

The General Counsel also alleged that Respondent violated the Act by issuing a written warning to Ridley on September 25, 1979. However, the evidence fails to show that Ridley received a written warning on that date. The evidence does demonstrate that Ridley was talked to regarding his action in letting concentrate run out on extruder #3. A written memorandum recording that incident was prepared by Brian Krysiak on September 25, 1979. However, Krysiak testified without rebuttal that no written reprimand was issued and that his memorandum was not considered as a disciplinary measure. Furthermore, the credited evidence fails to demonstrate that Respondent's action in cautioning Ridley about letting the concentrate run out on the extruder #3 was unjustified, or that Respondent's action in that regard was motivated, at least in part, by Ridley's union activity. Therefore, I find that the evidence does not support the General Counsel's allegation in this regard.

2. Robert Campbell

The General Counsel alleges that Respondent violated the Act by issuing a written warning to Campbell on September 6, 1979,[11] and by suspending Campbell for 3 days on July 31, 1979.

On July 31, Campbell was involved in a dispute with his supervisor, Don Jackson, after Campbell reported for work 45 minutes late. Respondent defended the General Counsel's allegation on the ground that it suspended Campbell because of Campbell's actions during that dispute.

The General Counsel points out that Robert Campbell was the employee that initiated and conceived the union movement during July 1979. Thereafter, around July 19, Campbell was called into Plant Manager Krysiak's office and interrogated about his union activities. The General Counsel argues that following that interrogation Campbell was followed and closely watched by Supervisor Don Jackson. On July 30, the day before he received the alleged unlawful suspension, Campbell hand-delivered a letter containing a list of the Union's in-plant committee members to Plant Manager Krysiak.

Therefore, from the standpoint of the traditional elements of an 8(a)(3) case, such as timing, knowledge by the Respondent of the alleged discriminatee union activities, and even union animus,[12] the General Counsel has set the stage, so to speak, for his case. Nevertheless, the General Counsel must yet show that Respondent was motivated to suspend Campbell, by factors protected under the Act. Obviously, an employee is not immune from employer discipline simply because he engages in extensive union activity. In other words, the General Counsel must show that, but for Campbell's union activities, he would not have been suspended on July 31.

The General Counsel, in recognition of the necessity of satisfying the element of cause, argued in its brief that Supervisor Jackson approached Campbell on the morning of July 31, in a loud and threatening tone. Although Campbell had been late on prior occasions, Jackson had never before demonstrated such an attitude as he demonstrated on this occasion. The General Counsel argues that Jackson's reaction was "out of character." I agree with the General Counsel's point. If in fact Jackson reacted uniquely, a logical explanation would be that he was motivated by Campbell's recent involvement in union activities.

However, I am persuaded that the evidence fails to establish that Jackson's reaction was out of character. The only evidence supporting that position is Campbell's testimony that Jackson had not reacted in a similar manner in the past. Contrarily, there are two major problems which creates grave difficulties for the General Counsel.

First, difficulty is presented by the record concerning whether Jackson acted "out of character" on July 31. Campbell admitted that the circumstances which caused his tardiness on July 31 prevented him from calling in and advising Jackson that he was going to be late. Company policy required employees to give notice when they are going to be late. Under those circumstances, I am not persuaded that some supervisors would not become angry and react accordingly. With that background I am reluctant to conclude that Jackson's reaction to Campbell arriving 45 minutes late without notice was out of character and, therefore, possibly was motivated by some factors other than Campbell's tardiness, absence strong evidence. No such evidence was offered. The evidence failed to demonstrate how Jackson normally reacted under similar circumstances. Campbell testified that on prior occasions when he was late, Don Nelson was in charge, and Nelson simply asked Campbell what had happened. Campbell also testified that he could not recall Don Jackson ever previously talking to him in a "threatening tone." Campbell did not testify that any of those prior occasions involved circumstances similar to the July 31 incident, however. Therefore, I

[10] There was testimony that another employee had mislabeled a number of cartons. However, that evidence was inconclusive as to whether the employee was disciplined short of discharge.

[11] The September 6 warning is also alleged as objectionable conduct (see Objection 12).

[12] See my findings *infra*. Read the alleged 8(a)(1) violations.

find that the evidence failed to prove that Jackson's July 31 actions were out of character.

Campbell testified that when Jackson came up to him that morning he told Campbell in a very loud tone of voice that if Campbell "were to come in late one more time without calling in that [Campbell] would be written up." Campbell testified that Jackson would not let him explain why he was late and words were exchanged. Campbell turned to walk away and Jackson called. "Hey, kiddo, do you hear me." According to Campbell, both he and Jackson became angry. Subsequently, Don Nelson came up and separated the two. Campbell eventually started to walk away and, as he did, he turned and yelled to Jackson. According to Campbell he yelled, "Yeah, bug off." According to Nelson and Jackson, Campbell yelled, "fuck you."[13]

According to uncontested testimony, consideration was given to discharging Campbell because of the July 31 incident in accordance with established company policy. However, Plant Manager Krysiak decided that Campbell should be suspended for 3 days, in lieu of discharge because of Campbell's good work record.

On the basis of my findings herein, and the record as a whole, I am unable to conclude that Respondent was motivated by Campbell's union activities when it suspended him on July 31. The evidence did not demonstrate that Respondent's action was unjustified or that Campbell was treated in a disparate manner. I am also convinced that the record does not support the General Counsel's allegation that Respondent violated the Act by issuing a written warning to Campbell on September 6.

The facts surrounding Campbell's warnings are not in serious dispute. Campbell admitted that Respondent changed his policy regarding the use of telephones. I find credible evidence showing that the phone policy was changed in early July, to a policy prohibiting employees from using nonpay type phones except to receive incoming emergency calls. As indicated below, I find that Respondent did not violate the Act by changing that policy.

Campbell was admittedly aware of the changes in policy when he used a nonpay phone in the shipping and receiving department on September 13. Even though he had used that phone subsequent to the change in policy, Campbell had not done so without first receiving permission from Supervisor Shealey. However, on September 13, Campbell did not see Shealey and proceeded to use the phone without asking permission.

Campbell testified that he observed other employees using the shipping and receiving phone from time to time. However, the evidence does not show that those employees were not using the phone to conduct company business. Nor does the evidence show that those employees did not receive supervisory permission before using the phone. Supervisor Shealey testified that employees who worked under his supervision were required to use the phone as part of their work duties.

I find no disparity in the way Campbell was treated. Therefore, I find that Respondent did not violate the Act, nor did it engage in objectionable conduct[14] by issuing a written warning to Campbell on September 13.

3. The independent 8(a)(1) allegations and objections

a. *Respondent prohibited its employees from using its phones*[15]

I credit the testimony showing that, even though Respondent did change its phone policy, that change was effected in early July. The evidence fails to prove that the change of policy occurred at a time after Respondent became aware of union activities among its employees. Moreover, I have credited testimony showing that Respondent had a valid business reason to change its phone policy. Krysiak testified that he changed the policy because the June phone bill was too high and included long distance calls that he could not account for. Therefore, I find no violation. Furthermore, I find that Respondent's actions in this regard do not constitute objectionable conduct.

b. *The August 9 to August 28, 1979, no-distribution rule*[16]

The evidence is not in dispute that on or about August 8, 1979, Respondent posted a notice to all employees. That notice purported to revise the employees handbook in two respects. The second of those, which is the one material to this allegation, stated as follows:

> No solicitation of any kind, including solicitations for memberships or subscriptions, will be permitted at any time by employees who are supposed to be working or in such a way as to interfere with the work of other employees who are supposed to be working. Anyone who does so and thereby neglects his work or interferes with the work of others will be subject to disciplinary actions.
>
> No distribution of any kind, including circulars or other printed materials shall be permitted in any area at any time.

Subsequently, on August 8, 1979, Respondent posted a second notice to employees, which was identical in all respects (except as shown below), to the notice posted on August 8. The one change reflected on the August 28 notice appeared in the no-distribution provision. That paragraph was changed to read as follows:

[13] On the basis of the entire record, my observation of the witnesses' demeanor, and in consideration of the probabilities, I am unable to credit Campbell's testimony over that of Jackson and Nelson in this regard. The evidence was uncontested that a few months after the July 31 incident Campbell was diagnosed by a psychiatrist as having an explosive personality. Campbell testified that the psychiatrist ran tests and discovered that he had an emotional problem when provoked and that he would go off into a rage. I have considered that evidence in determining that Campbell's comment was more likely in line with the testimony of Nelson and Jackson on July 31.

[14] See Objection 12, *supra* at fn. 1.

[15] This matter is alleged as an unfair labor practice and, also, as objectionable conduct (see Objection 11).

[16] This rule is alleged as an unfair labor practice and also as objectionable conduct (see Objections 7 and 8).

> No distribution of any kind, including circulars or other printed materials shall be permitted in any work area at any time.

Respondent admitted that the August 8 notice failed to include the term "working area." However, Respondent contends that that was an oversight and should not be found to constitute either objectionable conduct or a violation of the Act. Respondent argues that the rule was never enforced.

As to the issue regarding the alleged violation of the Act, established Board cases indicate a rule which prohibits distribution in any area at any time is violative.[17] Therefore, I find in agreement with the General Counsel that the rule as posted on August 8, 1979, is violative.[18]

The Board has consistently applied critical but not inflexible standards of conduct to the parties regarding their actions which may affect the election results. The standards are viewed in light of how the conduct in question may affect the eligible employees. In the instant situation, the evidence reflects that shortly after Respondent learned of its employees' union activities, it posted an amendment to the handbook. It appears that Respondent was attempting to correct its established rules to comply with Board precedent. However, through the omission of the term "work area" the distribution rule failed to comply with that precedent.

Thereafter, almost immediately after commencement of the critical period,[19] Respondent corrected its error by posting a no-distribution rule which was in compliance with Board precedent. This corrected posting occurred 7 days after the petition was filed, some 59 days before the election was conducted.

Moreover, the evidence fails to demonstrate that the August 8 no-distribution rule was ever applied to prohibit distribution of union literature.

Under these circumstances and in view of the absence of other objectionable conduct by Respondent,[20] I am reluctant to set the election aside. I feel that such an action would constitute an inflexible approach to a practical problem. Despite the illegal rule, employees were soon advised of the corrected amendment, and the corrected rule was substituted well in advance of the election. Therefore, I recommend that this matter does not constitute objectionable conduct.[21]

[17] *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962).

[18] See *Allen-Morrison Sign Co., Inc.*, 79 NLRB 904, 906 (1948), regarding Respondent's contention that the rule was never enforced.

[19] The petition in Case 10-RC-11872 was filed on August 21, 1979. The election was held on October 26, 1979.

[20] However, if the Board should sustain Objection 20, I recommend that the Board give consideration to the overall effect of that action and the action created by Respondent's August 8 no-distribution rule, in considering whether to set the election aside.

[21] Compare *Levi Strauss & Co.*, 172 NLRB 732, 746, 747 (1968), where an illegal rule was not rescinded until after the election; *L.O.F. Glass, Inc.*, 216 NLRB 845 (1975); *Stoddard-Quirk Manufacturing Co., supra; Firestone Textile Company, a Division of Firestone Tire & Rubber Company*, 203 NLRB 89 (1973).

c. *Threat of plant closure*

(1) Donald Jackson

Robert Campbell testified to several instances in which Don Jackson allegedly threatened plant closure. As to many of those alleged incidents, Campbell was unable to specify a date other than early in 1979. Therefore, it was not established that those occasions occurred within the 10(b) period. Campbell also testified that on one occasion during August 1979 he overheard Jackson say that if the Union came in they would shut down the plant. However, Campbell's testimony in that regard was confused on cross-examination. On cross-examination, Campbell testified that he told Jackson that the plant could not close just because the Union came in and Jackson stated that the plant can close if business consideration dictates that action. It appears that if Jackson's comments were in the context as related by Campbell on cross-examination, no violation occurred.[22] Since the record was not clarified to show otherwise, I must find no violation in the incidents reflected in Campbell's testimony.

Employee Geneva Bass testified that she overheard a conversation between employees Julia Hayes, Glenda Hayes, Lynn White, and Supervisor Jackson around July 19, 1979. Bass testified that Jackson came up and said that the Union could not do anything for you but take your money. Jackson went on to say that if the Union came in the plant will be closed down.[23]

Jackson, in his testimony, did not specifically testify regarding the incidents alleged by Bass. In regard to questions regarding Campbell's allegation that Jackson threatened employees with plant closure, Jackson testified that if he made such statement it was for economic reasons. I credit Bass' testimony in this regard. I find her to be a straightforward candid witness. Jackson, on the other hand, appeared to be evasive when examined on cross-examination. I noticed that Jackson was particularly evasive when dealing with matters regarding Grover Ridley. In view of the credited testimony of Geneva Bass, I find that Jackson did threaten employees with plant closure on July 19.

(2) Donald Nelson

Robert Campbell testified that in early 1979 he asked Donald Nelson of his opinion of the Union. According to Campbell, Nelson replied that may be there was a need for a union but at a plant like this, there was no need for one. Nelson indicated that if the Union would come in, they would close the plant down.

[22] Employee Henrietta Anderson testified that she came in during a conversation around July 18, which involved Jackson and Campbell. As Anderson walked up, she heard Jackson tell Campbell that Brian Krysiak had enough stock in the warehouse to close the plant down 6 months if the union talk is still going on. The record does not reflect what was said in that conversation before Anderson arrived. Anderson's testimony was not corroborated by Campbell who, allegedly, was one of the principals in the conversation. Therefore, I am unable to determine whether a violation occurred. I find that the evidence does not demonstrate such a violation on July 19.

[23] Bass also testified as to other comments Jackson allegedly made on July 19. Those matters will be dealt with below.

Donald Nelson denied having the conversation as testified to by Campbell.

In view of Campbell's vagueness to date, I am unable to find a violation. In that regard his testimony does not clearly indicate that the conversation with Nelson fell within the 10(b) period. Therefore, as to this allegation, I find no violation.

d. *The employees handbook*

The General Counsel alleges that in two respects the employees handbook contained matters which were violative of the Act. It is uncontested that both those matters (Rules No. 4 and 7, *infra*), were amended on August 8, 1979. Therefore, as to each of the allegations discussed below, the General Counsel has limited his allegation to the period beginning February 3, 1979, and extended to August 8, 1979.

The rules found in the employees handbook during the time up to August 8, 1979, indicate as follows:

> Acts of misconduct such as the following are strictly prohibited:
>
> 4. Attempting to persuade fellow employees to follow a course of action contrary to the interest of the company.
>
> 7. Solicitation in any form among employees, vendors, or customers.

Respondent argues that the above rules were not enforced and are, therefore, not violative. However, the Board has on frequent occasions considered that very argument. In each instance the argument has been rejected.[24] I find that the above rules would tend to interfere with employees' Section 7 rights and are therefore violative.

e. *Interrogation*

Employee Henrietta Anderson testified regarding a conversation she overheard on July 18, 1979. As indicated above, Anderson testified that she overheard Jackson tell Robert Campbell that Brian had enough stock in the warehouse to close the plant down for 6 months if the union talk is still going on. Anderson testified that subsequently Robert Campbell left. Don Jackson then came back; and in the presence of two other employees and Anderson, Jackson asked, "Do you all want a union." Anderson indicated that Lynn White responded, "Well, if it's going to cause me to lose my job, I don't want a union." I found Anderson to be a straightforward witness, and I credit her testimony in this regard.[25] I find Jackson's comments in that regard constitute interrogation in violation of Section 8(a)(1).

Employee Phyllis Smith testified that on August 6, 1979, she was approached by Supervisor Donald Jackson who stated, "I heard you signed the union card." Smith asked Jackson who told him and Jackson replied that he saw her name on the paper. Jackson told Smith that he wished she had talked to him before signing it and that it was not too late for her to change her mind. I was impressed with Smith's testimony. Additionally, I note that her recollection appears probable in view of the fact that Respondent was presented with a letter from the Union dated August 6, 1979, which, among other things, listed Phyllis Smith as one of several employees that was assisting the Union in its organizational campaign. Therefore I credit Smith in this regard.

Although Jackson's comments were apparently precipitated by the letter from the Union, his comments constitute interrogation into how strongly Smith felt about the Union. Under those circumstances, I find, in agreement with the General Counsel, that an 8(a)(1) violation was committed.

Alleged discriminatee Grover Ridley also testified regarding instances of interrogation by Supervisor Jackson regarding the wearing of union T-shirts and regarding the substance of Ridley's conversation with Robert Campbell. However, as indicated above, I am unable to credit Ridley's testimony. Therefore, those particular allegations must fail for lack of credible evidence.

In addition to the allegations regarding Supervisor Don Jackson, Plant Manager Krysiak admitted to a conversation with Robert Campbell on July 19, 1979. Krysiak testified that he received a rumor that Robert Campbell was pushing the Union. Campbell was called to Krysiak's office; and in the presence of Supervisor Don Nelson, Campbell was asked by Krysiak; "Bob, straight up, I want to know, this is between you and me, nothing will come of it. Straight up, do you feel that you need a union in this plant?"

According to Krysiak's testimony, Campbell assured him that he was not pushing the Union. However, Campbell did advise Krysiak that he would vote for a union if an election was held. I find that Krysiak's comments to Campbell on that occasion constitute interrogation in violation of the Act.[26]

f. *Threat of discharge*

Geneva Bass testified that during a conversation in July involving Julia Hayes, Glenda Hayes, Lynn White, and Don Jackson, after Jackson mentioned that if the Union came in the plant would be closed, Jackson said, "I told him to go ahead and fire Bob Campbell. They should go ahead and get rid of him." As indicated above, I credit the testimony of Bass. In view of the context of the conversation, and in view of the fact that it was well known that Campbell was the leading union advocate in the plant, I agree with the General Counsel's contention that Jackson's statement constitutes a threat to discharge employees for union activities.

[24] *Allen-Morrison Sign Co., Inc., supra; L.O.F. Glass, Inc., supra.*

[25] Even though I failed to find, above, Anderson's testimony regarding Jackson's comments earlier in this conversation proved that he threatened plant closure in violation of the Act. I did not discredit the testimony of Anderson in reaching that conclusion. My findings in that regard are based on Anderson's testimony that she did not overhear that portion of the conversation which preceded Jackson's remarks regarding closing the plant, plus admissions by Robert Campbell that on occasion Jackson, in commenting about plant closure, was responding to Campbell's statement that the plant could not be closed because of union activity.

[26] Although not specifically alleged, the interrogation by Plant Manager Krysiak was related to and intertwined with the complaint allegations, and, I find, that that issue was fully litigated. See *The Estate of Alfred Kaskel, d/b/a Doral Hotel and Country Club*, 240 NLRB 1112 (1979).

g. *Threat that it would be futile for employees to select the Union*

The General Counsel alleges that by mailing a letter to its employees on October 19, 1979, Respondent threatened its employees that it would be futile to select the Union as their collective-bargaining representative. The letter which was signed by Plant Manager Krysiak, reads as follows:[27]

> Dear (Employees):
>
> If the Union wins the election on October 26, all the Union gets is a right to sit down and bargain with the company.
>
> Bargaining is give and take. The company will not do more with a union than we will without one. In an effort to force us to do more, the Union would have to *STRIKE* or walk away!
>
> What would a strike mean to you? It means you would not get any paycheck. If you don't work, you won't get paid. If you don't get paid, *who* will pay your car note, house note, rent, personal loans, utilities, medical and grocery bills? The Union claims they will. Do you *really* believe them? There is no such thing as something for nothing! Also, you *CANNOT* draw unemployment in Georgia when you are on strike.
>
> The Union claims to have a strike fund. They also claim no assessments. Will members of other unions pay for your strike? And, how much will you pay when someone else is on strike? Ask any of your fellow workers who have been union members!
>
> You *can* lose your job if a strike is called. In cases of economic strikes, the company has the right to permanently replace you and you will no longer have a job here.
>
> The Union cannot give you anything—they can only make wild promises. Their only weapon is a strike and you will be the one to suffer.
>
> Don't risk losing what you now have. *VOTE NO* on October 26.
>
> Sincerely,
>
> /s/ Brian Krysiak
>
> Plant Manager

Respondent in defending this allegation by the General Counsel argues that the October 19 letter should be considered against the background of "short sighted promises" by the Union. Additionally, Respondent argues that throughout the campaign it informed its employees that it would bargain in good faith with the Union.

However, I find that the letter does convey to the employees that it would be futile for them to elect the Union. The letter stresses that Respondent will do nothing more with the Union than it would without, regardless of bargaining. It stresses that the Union would have to strike and that a strike would seriously injure the employees by inflicting financial damage and possible job loss. Therefore, I find in agreement with the General Counsel that, by sending the October 19 letter to employees, Respondent violated Section 8(a)(1) of the Act.[28]

h. *Soliciting employees to report to Respondent the union activities of other employees*

Employee Geneva Bass testified that on January 21, 1980, the plant manager spoke to employees. Bass testified that during his speech Krysiak stated that "he had learned rumors about some of the employees who had been complaining about the union pushers harassing them, threatening them. And he said one employee, in particular, came to him and complained that she had been threatened by one of the union pushers." Bass testified that Krysiak said "if he—we heard any such thing as harassing or somebody harassing us to come to him and let him know. He wanted to hear about it." Bass testified that a notice to employees was also posted by Respondent which included the matters covered by Krysiak in his speech. Bass testified that the notice stated "the Union pushers are at it again. And they will go any length to get you to join the Union. And if any of the Union pushers harass you or threaten you in any kind of way, you can go to Don Jackson, Carolyn, or him [Krysiak]. Let him know about it."

Brian Krysiak admitted that he did speak to employees about January 21. In regard to Bass' testimony, Krysiak testified, "I basically covered another point which concerns me was that some employees were claiming harassment by other employees. And that was something that really did concern me because I don't feel that anybody in the plant, whoever they are, or whatever their ideas are, that's what I tried to get across to employees." Krysiak testified that "I made a request that if anyone felt that they were being harassed or intimidated—anyone—that they should get a hold of their supervisor, personnel manager or myself immediately so we could take steps to correct it, this condition."

The Board has recently held that statements such as those admitted by Krysiak have a potential dual effect that would unlawfully interfere with protected organizational activities, and are violative of the Act. *W. F. Hall Printing Company*.[29] Therefore, I find in agreement with the General Counsel that, by soliciting its employees to report to Respondent other employees' union activities, Respondent violated Section 8(a)(1).

CONCLUSIONS OF LAW

1. Custom Trim Products is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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[27] Respondent's October 19, 1979, letter is also alleged as one basis for Objection 20 of Petitioner's objection. The Board, by its Order, in Case 10-RC-11872, is holding disposition of the issues raised by Objection 20 in abeyance. Therefore, I have not considered whether the matters contained in Respondent's October 19, 1979, letter constituted objectionable conduct.

[28] *Down Products, Inc. & American Metals Corporation*, 229 NLRB 116 (1977); *Calcite Corporation*, 228 NLRB 1048 (1977); *The McCuller Press*, 227 NLRB 1415 (1977); *The Tappan Company*, 228 NLRB 1389 (1977).

[29] 250 NLRB 803 (1980); see also *Colony Printing and Labeling, Inc.*, 249 NLRB 223 (1980).

2. United Furniture Workers of America, AFL-CIO, and United Furniture Workers of America, AFL-CIO, Local 361, are labor organizations within the meaning of Section 2(5) of the Act.

3. By the conduct found violative in section 3 hereof, Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed them by Section 7 of the Act, thereby engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. Respondent did not engage in unfair labor practices by issuing written reprimands and discharging its employee, Grover Ridley; or by issuing a written reprimand and suspension to its employee, Robert Campbell; or by engaging in other actions alleged herein which I have found lack merit.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

As to the objections in Case 10-RC-11872, I recommend that Objections 7, 8, 11, and 12 be overruled. As indicated below, I have not considered Objection 20.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. I recommend that the allegations of the complaint that were not proved be dismissed.

Upon the foregoing findings of facts, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[30]

The Respondent, Custom Trim Products, Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act by publishing or maintaining in effect or enforcing or applying any rule or regulation which prohibits its employees from distributing literature or soliciting on behalf of the United Furniture Workers of America, AFL-CIO, Local 361, or any other labor organization, in nonworking areas of this plant during their nonworking hours; interrogating employees concerning the employees' union activities; threatening its employees with plant closure because of their union activities; threatening its employees with discharge because of its employees' union activities; threatening its employees that it would be futile for them to select the Union as their collective-bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist a labor organization, or to refrain from any and all such activities.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Act:[31]

(a) Post its plant in Atlanta, Georgia, facility copies of the attached notice marked "Appendix."[32] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by an authorized representative of Respondent, shall be posted immediately upon receipt thereof, and be so maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

[30] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[31] In view of the evidence indicating that Respondent has corrected its rules found violative herein, I have not recommended affirmative action regarding those rules.

[32] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT publish or maintain any rule or regulation which prohibits our employees from distributing literature on behalf of United Furniture Workers of America, AFL-CIO, or Local 361, or any other labor organization, in nonworking areas, during nonworking time.

WE WILL NOT maintain any rule which prohibits our employees from soliciting on behalf of a labor organization during nonworking time.

WE WILL NOT interrogate our employees concerning their union activities.

WE WILL NOT threaten our employees with plant closure because of their union activities.

WE WILL NOT threaten our employees with discharge because of their union activities.

WE WILL NOT ask our employees to report to us the union activities of others.

WE WILL NOT threaten our employees that it would be futile for them to select United Furniture Workers of America, AFL-CIO, Local 361, or any other union, as their bargainig representative.

We will not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.